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Advanced Family Law Issues for Paralegals

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Common Ethical Issues for Family Paralegals

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INTRODUCTION

This paper will address common ethical issues addressed by the Office of the Practice Advisor with respect to the practice of family law. I hope to offer some practical advice on each subject. This paper is split into four main parts which are in no particular order. The first part deals with trust conditions and undertakings. The second part addresses dealing with self-represented parties. The third part deals with common confidentiality questions arising out of a paralegal moving law firms. Finally, the paper addresses communications with the court and courthouse staff. Please note when reading below that the word “Code” refers to the Law Society of Alberta Code of Conduct. While the Code does not apply to legal assistants and paralegals, it provides them with an understanding of ethical duties their lawyers must comply with.

COMMON TRUST CONDITION ISSUES

By far, the most common call Practice Advisors receive with respect to all kinds of transactions, including those related to family law files, are with respect to trust conditions and undertakings. Rule 7.2-14 of the Code reads:

“A lawyer must not give an undertaking that cannot be fulfilled and must fulfil every undertaking given and honour every trust condition once accepted.”

The use of trust conditions and undertakings by lawyers enables them to implement an agreement that was agreed to by their respective clients. It is, therefore, of utmost importance that lawyers and paralegals not use trust conditions in such a way as to jeopardize the transaction.

According to Commentary [2] of the above rule, trust conditions should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed in writing and communicated to the other party at the time the property is delivered. In addition, Commentary [3] to Rule 7.2-14 of the Code provides that a lawyer should not impose or accept a trust condition that is unreasonable.

Similarly, undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. Simply writing words to the effect of “on behalf of my client” has not been deemed sufficient to relieve a lawyer of their personal responsibility when giving an undertaking.

The most common issue raised with Practice Advisors with respect to trust conditions is when lawyers or their paralegals attempt to modify the terms of the underlying contract. This can occur